

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1287 of 1996

in

SPECIAL CIVIL APPLICATION No 10074 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJNIKANT J AMRANIA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Appellants
MR JS YADAV FOR MR YN OZA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 07/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Admitted. Mr. Jagdish S. Yadav for Mr. Y.N. Oza, appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for

final hearing today.

This appeal is filed against an order passed by learned Single Judge in Special Civil Application No. 10074 of 1995 on September 9, 1996.

Appellants are the original petitioners. They filed the above petition for appropriate writ, direction or order quashing and setting aside the action of Jamnagar Area Development Authority ('JADA' for short) directing petitioners to remove the construction of transport godowns constructed by petitioners in godown zone on plot Nos. 40, 41 and 42 of S.No.17, situated at village Dhichda of the ownership of petitioners.

The case of petitioners was that they purchased the said S.No.17 in 1993 on which plot Nos.40, 41 and 42 have been located. Petitioners thereafter sought permission to construct transport godowns. Permission was granted. Accordingly, construction was made. Case of JADA was that while constructing godowns, illegalities were committed. Though permission was not granted for the area as well as for more godowns, godowns were constructed which were more in number and also on the area in respect of which no permission was granted. Learned Single Judge was of the opinion that in these circumstances, illegality was proved and hence the petition was dismissed.

At the time of hearing of this appeal, our attention was invited by learned counsel for the appellants to an order passed by learned Single Judge in Special Civil Applications No. 13021 to 13031 of 1994 decided on September 18, 1995. The said order reads as under:

"Heard the learned Advocates for the parties.

Considering the facts of the case, it is directed that in case the petitioner in each of the petitions makes representation to the Chief Executive Authority within 15 days from today for regularisation of the disputed structure, the same shall be decided sympathetically, keeping in view the fact that the Godowns are used for storage of goods meant for exports. In case the representation is decided against the petitioner, the same shall not be given effect to for a period of 15 days from the date of communication of the decision. Meanwhile, the interim relief granted by this Court to maintain status-quo shall continue till the decision is taken by the respondent authority i.e., the Chief Executive

Authority for 15 days thereafter as aforesaid. It would be open for the petitioner to approach this Court in case of difficulty. It will also be open for the petitioner to challenge this decision on all the grounds including the grounds available in the present Special Civil Application. This Special Civil Application is accordingly disposed of. Notice discharged."

Learned counsel for appellants made a statement at the Bar that the case of appellants is identical to that of the petitioners of those petitions. The place is also same i.e., village Dhichda, near Jamnagar. He, therefore, made a grievance that if in above referred matters the above order was passed, comity required that the learned Single Judge ought to have followed the said order by issuing similar directions.

Learned counsel for the respondent - JADA also fairly conceded that the above order was passed in other Special Civil Applications. He, therefore, said that similar order may be passed in the present LPA also.

For the foregoing reasons, in our opinion, the appeal deserves to be allowed and accordingly it is allowed. It is directed that in case the appellants make representation to the Chief Executive Authority within 15 days from today for regularisation of the disputed structure, the same shall be decided sympathetically, keeping in view the fact that the godowns are used for storage of goods meant for exports. It is also directed that in case the representation is decided against the appellants, the same shall not be given effect to for a period of 15 days from the date of communication of the decision. Status quo as on today to be continued till the decision is taken by the respondent authority i.e., the Chief Executive Authority and 15 days thereafter. No order as to costs.

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